IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.350 of 1992

Date of decision : August 22, 2007

State of H.P. **…Appellant.**

Versus

Balbir Singh **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant : Mr. Som Dutt Vasudeva, Additional Advocate General with Mr. D.S. Nainta, Deputy Advocate General.

For the Respondent : Mr. Anuj Nag, Advocate, Advocate.

Surjit Singh, Judge(Oral)

Heard and gone through the record.

2. Respondent Balbir Singh alias Ballu was sent up for trial for an offence punishable under Section 304 I.P.C. for allegedly killing one Tan Singh, a street performer, in circumstances which constitute an offence of culpable homicide not amounting to murder.

3. Prosecution story, as per record, was that the deceased was performing at a public place disguised as a bear with thick layer of hair stuck to his body, which gave him appearance of a bear. Respondent was among the onlookers. He sprinkled some petrol like liquid on the deceased and then lit a match stick. The deceased caught fire and sustained burn injuries. He went to the police station and lodged FIR. Four days after the incident, he died when admitted in the hospital for the treatment of burn injuries.

Whether reporters of the local papers may be allowed to see the judgment?

4. Trial Court, after recording the evidence adduced by the prosecution acquitted the respondent holding that the charge did not stand established.

5. Prosecution did not examine any eye witness during the course of trial. It only relied upon the version given by the deceased in the form of FIR Ext. PK and pleaded that it was a dying declaration. Nobody was examined by the prosecution to say that the aforesaid statement was made by the deceased. It examined PW-10 Man Singh, Inspector by whom the FIR is signed. The witness did not say that the statement was made by deceased Tan Singh, leave alone his saying that it was made to him. He simply stated that the statement was signed by him. Thus, the prosecution even failed to prove that the version contained in Ext. PK was stated by the deceased. Not only this, in Ext.PK, the name of the assailant is recorded as Ballu. It is stated that the spectators were calling the assailant by that name. Name of the respondent is Balbir Singh. There is no evidence on record that he is also known by the alias of Ballu.

6. In view of the above stated position, we see no merit in the present appeal. Hence, the same is dismissed.

(Surjit Singh), J

August 22, 2007(ss) **(Surinder Singh), J**